



September 17, 1999

Mr. John Steiner
Director
Law Department
City of Austin
P.O. Box 1546
Austin, Texas 78767-1546

OR99-2609

Dear Mr. Steiner:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 127319.

The City of Austin (the "city") received a request for information related to a named individual. You relate that the city has information responsive to some but not all of this request.¹ You seek to withhold the responsive information that is in the possession of the city under section 552.103(a) of the Government Code. You have submitted this information to this office for review. We have considered the exception you claim and reviewed the submitted information.

Section 552.103(a), the "litigation exception," excepts from disclosure information relating to litigation to which the state or a political subdivision is or may be a party. The governmental body claiming this exception has the burden of providing relevant facts and documents to show that the section 552.103(a) exception is applicable in a particular situation. The test for meeting this burden is a showing that (1) litigation is pending or

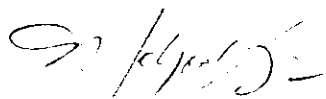
¹You indicate that the city does not possess the requested medical records. The Public Information Act does not require a governmental body to obtain information not in its possession or to prepare new information in response to an open records request. Open Records Decision No. 445 (1986). We note that the requestor seeks "declaration of coverage pages, the policy limits, the amount of any deductible and the identity and nature of all coverage provisions" as well as the excess or other insurance coverage that may be applicable to the subject claim for damages. As you have not supplied information responsive to this request for our review, we assume you have released it to this requestor.

reasonably anticipated, and (2) the information at issue is related to that litigation. *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 at 4 (1990). You must meet both prongs of this test for information to be excepted under section 552.103(a).

You have supplied a copy of a letter from an attorney who represents the estate of the subject individual. The letter alleges that the subject individual had been incarcerated on August 15, 16, and 17 of 1997, and died on or about August 17, 1997. It alleges that the subject individual's death was caused by the negligence of the city. The letter is written "for the purpose of pursuing a negligence claim against the City of Austin." The letter purports to comply with the notice requirements of Chapter 1 of the Civil Practices and Remedy Code, the Texas Tort Claims Act. Compliance with these requirements is a prerequisite to bringing suit against the city. We conclude from our review of this letter that you have established reasonable anticipation of litigation. The information submitted by you includes incident reports, booking sheets and mug shots for the subject individual. We agree that these records relate to the anticipated litigation. However, even when litigation is reasonably anticipated, basic factual information about a crime must be released. Open Records Decision No. 362 (1983). Information normally found on the front page of an offense report is generally considered public, and must be released *Houston Chronicle Publishing Company v. City of Houston*, 531 S.W.2d 177 (Tex Civ. App.- Houston [14th Dist. 1975, writ ref'd n.r.e.); see Open Records Decision No. 127 (1976). Thus, you must release the type of information that is considered to be front page offense report information, including a detailed description of the offense and arrest, even if this information is not actually located on the front page of the offense report. The remaining information may be withheld under section 552.103(a) of the Government Code.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Sincerely,



Michael Jay Burns
Assistant Attorney General
Open Records Division

MJB/ch

Ref: ID# 127319

Encl. Submitted documents

cc: Mr. Norberto Flores
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P.O. Box 5384
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(w/o enclosures)